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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,023	10/04/2000	HIDEKI KAWASAKI	5.1158 DIV I	1950
5514	7590	03/15/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			WALICKA, MALGORZATA A	
			ART UNIT	PAPER NUMBER
			1652	

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/678,023	KAWASAKI ET AL.	
	Examiner	Art Unit	
	Malgorzata A. Walicka	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) ____ is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) 3-14 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

The application and preliminary amendment are acknowledged. Claims 1-2 are cancelled; claims 4, 5, 6, 7, 8, 9, are amended. New claims 11-14 are added. Claims 3-14 are pending and are the subject of this Office Action.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 3, drawn to a protein having the amino acid sequence represented by SEQ ID NO: 1 complementing low temperature sensitive fermentability, classified in class 530, subclass 350.
- II. Claim 4, 5, 6,7, 8, 9, 11, 12, 13 drawn to yeast having the gene encoding low temperature sensitive fermentability inactivated, dough containing said yeast, and process of making bread, classified in class 435, subclass 255.2.
- III. Claim 10 and 14 drawn to a process for producing ethanol by yeast having the gene encoding low temperature sensitive fermentability inactivated, classified in class 435, subclass 161.

The inventions are distinct, each from the other because:

Inventions I and II-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case Group I comprises a chemical compound having its specific function and effect of complementing low-temperature-sensitive fermentation, whereas inventions II-III is directed to particular kind of yeast cells, composition containing these

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of cells and methods of use of these cells. Inventions I and II-III are not disclosed as capable of work together.

Invention II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product, i.e. the yeast having the gene encoding low temperature sensitive fermentability inactivated can be used in a materially different process, for example for production of bread.

Inventions I-III are distinct for the reasons given above and have acquired a separate status in the art. Because of their recognized divergent subject matter and/or different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C. F. R. paragraph 1.48 (b) if one or more of the currently named inventors are no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 C.F.R. paragraph 1.48 (b) and by the fee required under CFR paragraph 1.17(h).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Małgorzata A. Walicka, Ph.D., whose telephone number is (571) 272-0944 and the right fax number is (571) 273-0944. The examiner can normally be reached Monday-Friday from 10:00 a.m. to 4:30 p.m. EST.

If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, Ph.D. can be reached on (571) 272-0928. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionists whose telephone number is (703) 308-0196.

Małgorzata A. Walicka, Ph.D.

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Patent Examiner



REBECCA E. PRIMARY
PRIMARY EXAMINER
GROUP 1652
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